

COMMUNICATIONS ASSISTANCE FOR LAW
ENFORCEMENT ACT:
Third Annual Report to Congress

Submitted to:

*Committees on the Judiciary
United States House of Representatives
and
United States Senate*

*Committees on Appropriations
Subcommittees for the Departments of Commerce, Justice, and State,
the Judiciary and Related Agencies
United States House of Representatives
and
United States Senate*

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I. PURPOSE

Section 112 of The Communications Assistance for Law Enforcement Act (CALEA) directs the Attorney General to submit an annual report to Congress, beginning November 30, 1995, on the amounts paid during the preceding fiscal year to telecommunications carriers under section 2608 of title 18, United States Code. The report, which is to be made available to the public, shall include:

- (A) a detailed accounting of the amounts paid to each carrier and the technology, equipment, features or services for which the amounts were paid; and
- (B) projections of the amounts expected to be paid in the current fiscal year, the carriers to which the payment is expected to be made, and the technologies, equipment, features or services for which payment is expected to be made.

Pursuant to section 112, this third annual report is submitted to Congress. The report provides financial information regarding Fiscal Year (FY) 1997 expenditures to telecommunications carriers, and projected spending levels for FY 1998.

II. BACKGROUND

Recognition of electronic surveillance as a vital investigative tool for law enforcement dates back nearly thirty years. Beginning in 1968 with the passage of The Omnibus Crime Control and Safe Streets Act, Congress and the Courts have continually affirmed law enforcement's authority, within strict established parameters, to conduct lawfully authorized electronic surveillance. Through each successive legislative initiative, Congress has successfully preserved the balance between law enforcement's need to conduct electronic surveillance and the public's right to privacy, as well as maintained the balance between law enforcement's needs and the statutory cooperative duties of telecommunications carriers.

The rapid and expansive changes in the telecommunications industry have raised many unique and complex issues that threaten this balance. The introduction of new, digitally-based technologies, transmission modes, services and features has made it increasingly difficult, if not impossible, for law enforcement to conduct court-ordered electronic surveillance.

In recognition of technologies' continuing erosion of this important investigative tool, industry and law enforcement held formal discussions as early as 1992 to forge a consensus resolution. In 1994, representatives from privacy groups, the telecommunications industry and law enforcement collectively drafted, and Congress passed, CALEA in October, 1994. President Clinton signed the legislation into law on October 25, 1994 (Public Law 103-414; 47 U.S.C. 1001-1010).

The intent of CALEA was neither to expand nor reduce law enforcement's authority to conduct lawfully authorized electronic surveillance. Rather, the essence of the legislation is to clarify and more fully define the nature and extent of the responsibilities of the telecommunications industry in the face of dynamic change in telecommunications technology so that law enforcement may maintain its technological ability to utilize electronic surveillance as an investigative tool.

To facilitate CALEA's implementation, Congress authorized \$500 million to be appropriated to reimburse the telecommunications industry for certain eligible costs associated with modifications to their networks. The Omnibus Consolidated Appropriations Act of 1997 (P.L. 104-208) amended CALEA by adding Title IV which created the Telecommunications Carrier Compliance Fund (TCCF) to facilitate the disbursement of funds available for CALEA implementation.¹

¹ The Omnibus Consolidated Appropriations Act of 1997; P.L. 104-208, 110 STAT 3009 (1996)

III. STATUS OF CALEA

Prior to disbursement of any TCCF funds, the Attorney General was required to submit an Implementation Plan to Congress outlining its implementation approach. In accordance with this requirement, the CALEA Implementation Plan was submitted in March, 1997 to each member of the Judiciary and Appropriations Committees of the House and Senate. Subsequently, the House and Senate Committees on Appropriations released \$50,000,000 of the available funds from the TCCF during FY 1997 to be used for reimbursement of industry systems engineering efforts. However, due to the inability of the industry to provide cost and technical information, none of the \$50,000,000 was obligated.

Pursuant to ongoing discussions with the Committees on Appropriations and industry, the Federal Bureau of Investigation (FBI) is preparing a revised Implementation Plan that will be submitted to Congress.

IV. PAYMENTS TO TELECOMMUNICATIONS CARRIERS

A. Prior Year Payments: FY 1997

The Omnibus Consolidated Appropriations Act of 1997 established the TCCF within the United States Treasury and appropriated \$60,000,000 in initial CALEA funding. Additionally, The Act authorized agencies with law enforcement and intelligence responsibilities to transfer unobligated balances into the TCCF, subject to applicable Congressional reprogramming requirements.

The FY 1997 balance of the TCCF was \$102,580,270. This amount was a result of the following deposits:

DOLLARS	SOURCE
\$60,000,000	Direct Appropriation
\$40,000,000	DOJ Working Capital Fund
\$1,000,000	United States Postal Inspection Service Transfer
\$1,580,270	United States Customs Service Transfer
\$102,580,270	TOTAL

No payments were made to telecommunications carriers from the TCCF pursuant to sections 104(e) and 109 of CALEA, during the period October 1, 1996, through September 30, 1997.

B. Current Year Estimates: FY 1998

The Drug Enforcement Administration (DEA) has proposed the transfer of an additional \$15,000,000 to the TCCF. This transfer is awaiting Congressional approval. Law enforcement continues to work with other agencies to transfer additional eligible funds. However, as of this date, the level of contributions to be transferred to the TCCF during FY 1998 by other Federal law enforcement and national security agencies is unknown.

Several major manufacturers have informed the Government that they are currently pursuing the development of a CALEA capability solution, which they anticipate will be available for their carriers by the October 1998 compliance date for capability. In addition, the Government continues to actively pursue agreements with major manufacturers and other providers of potential CALEA solutions in an effort to further hasten solution availability.

As soon as agreement can be reached with a manufacturer and/or carrier on the provision of data in sufficient detail for the Government to determine fairness and reasonableness, the Government is prepared to begin the reimbursement process during FY 1998. Should agreements be finalized with the major manufacturers and carriers as hoped, it is possible that the Government could commit the full balance of the TCCF during FY 1998. Due to the preliminary nature of the negotiations, the Government is unable to project specific FY 1998 reimbursement amounts or schedules at this time.

